

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Malibu FM Emergency and Community Broadcasters, Inc.	)	File No. BNPL-20131112BDL
For a New Low Power FM Station at Malibu, California	)	Facility ID No. 195940

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 16, 2015**

**Released: July 17, 2015**

By the Commission:

1. The Commission has before it an Application for Review (“AFR”) filed by Malibu FM Emergency and Community Broadcasters, Inc. (“MFM”) on January 20, 2015. MFM seeks review of a December 18, 2014, Media Bureau (“Bureau”) decision.<sup>1</sup> Therein, the Bureau treated MFM’s amendment filed on July 28, 2014 as a timely petition for reconsideration challenging the Bureau’s July 15, 2014 dismissal of MFM’s application for a new low power FM station at Malibu, California.<sup>2</sup> Upon review of the AFR and the entire record, we conclude that the AFR is procedurally barred by 47 C.F.R. §1.115(c) because it relies on legal and factual arguments not previously presented to the Bureau.<sup>3</sup> Moreover, even if the AFR were procedurally acceptable, we would uphold the Bureau’s decision for the reasons stated therein. As the Bureau correctly concluded, and notwithstanding MFM’s new claims, the Secretary of State of California did not recognize MFM to be legally in existence as a nonprofit corporation until December 26, 2013, over a month after MFM had filed its subject LPFM application. Accordingly, MFM was not legally in existence when it filed its application, “thus failing to meet the eligibility requirement set forth in Section 73.853(a).”<sup>4</sup>

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<sup>1</sup> *Malibu FM Emergency and Community Broadcasters, Inc.*, Letter (MB dated Dec. 18, 2014) (“December Decision”).

<sup>2</sup> *Malibu FM Emergency and Community Broadcasters, Inc.*, Letter (MB dated July 15, 2014) (dismissing application as defective pursuant to 47 C.F.R. § 73.3566(a) due to failure to submit documentation establishing MFM’s status as a nonprofit educational organization for purposes of 47 C.F.R. § 73.853).

<sup>3</sup> See AFR at 1-5; compare July 28, 2014 amendment to File No. BNPL-20131112BDL.

<sup>4</sup> December Decision at 2, citing *Applications for Review of Decisions Regarding Six Applications for Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13396 (2013) (“an LPFM applicant’s status as a valid non-profit organization at the time it files its application is fundamental to our determination of the applicant’s qualifications to hold an LPFM authorization.”). This requirement is grounded in Section 397(6)(A) of the Communications Act of 1934, as amended, which requires that noncommercial educational stations, such as those in the LPFM service, be licensed to a “public agency or nonprofit public foundation, corporation or association.” See 47 U.S.C. § 397(6)(A); *Id.* at 13394, n. 39.

2. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>5</sup> and Section 1.115(g) of the Commission's Rules,<sup>6</sup> the Application for Review filed by Malibu FM Emergency and Community Broadcasters, Inc. on January 20, 2015, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>5</sup> 47 U.S.C. § 155(c)(5).

<sup>6</sup> 47 C.F.R. § 1.115(g).